

California Regional Water Quality Control Board  
Santa Ana Region

November 18, 2005

STAFF REPORT

ITEM: 6

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Rickey and Joyce Baker, 21148 Wade Court, Wildomar, Riverside County, APN 368-272-022

DISCUSSION:

On September 13, 2005, Acting Agent Donald H. Boernsen, Boernsen Construction Company, on behalf of Rickey and Joyce Baker, contacted staff requesting approval for the use of a second septic tank-subsurface disposal system at the above-referenced site. Mr. and Mrs. Baker own and reside in a house located on a 0.45-acre lot at 21148 Wade Court, Wildomar. This area of Wildomar is unsewered. The existing house is currently connected to an existing septic tank-subsurface disposal system. Mr. and Mrs. Baker propose to construct a second dwelling unit to provide a residence for their ailing mother. A second septic system is proposed to serve this second dwelling unit.

On October 13, 1989, the Regional Board adopted Resolution No. 89-157, which requires new developments for which on-site subsurface disposal system use is proposed to have a minimum one-half acre of land per dwelling unit. The Board found that it was necessary to limit the density of new subsurface disposal systems to control the nitrate quality problems found in the groundwater of the Region. Mr. & Mrs. Baker's proposed development is a new development as defined in Resolution No. 89-157 and is therefore subject to the minimum lot size requirements specified therein. With a density of 0.225 acres per dwelling unit, Mr. & Mrs. Baker's proposal does not comply with the Board's minimum lot size requirements. Accordingly, Board staff denied Mr. & Mrs. Baker's request for an exemption from the minimum lot size requirements.

In adopting the minimum lot size requirements (MLSRs), the Board recognized that it was appropriate to distinguish between "existing" developments using subsurface disposal systems (i.e., those already in place or approved at the time the MLSRs were adopted), and "new" developments. Thus, the Board specifically exempted from the one-half acre requirement existing developments where septic tank-subsurface disposal systems had been installed by September 7, 1989 or for which conditional approval (e.g. conditional use permit, or conditional approval of tentative parcel or tract map) had been obtained by that date. The one-half acre requirement applies only to "new" developments.

The MLSRs also exempt additions to existing dwellings. The intent of distinguishing between additions that are attached to existing dwellings and freestanding structures was to guard against the use of the freestanding structure as a second single-family residence on the property. In this case, the purpose of the second dwelling unit is to provide a home for Mr. & Mrs. Baker's mother.

The Bakers note that the additional flows that would occur as a result of this project would be no greater than the flows that would be allowed if they were to add on to their existing house and replace the existing septic tank to accommodate the increased flows, which would be exempt from the minimum lot size requirement. On this basis, Mr. & Mrs. Baker are appealing to the Regional Board for reversal of staff's denial of an exemption from the minimum lot size requirements.

While it is true that there would be no difference in wastewater flows on an immediate basis, i.e., while Mr. & Mrs. Baker own the property and their mother resides with them, there can be no guarantee that wastewater flows would not increase considerably in the future. As stated above, it was on this basis that the Board determined not to exempt the construction of new freestanding structures from the minimum lot size requirements. Therefore, Mr. & Mrs. Baker have offered to remove the fixture units in the second residence and to remove the second septic system from service once the second residence is no longer required for their mother's use. Mr. & Mrs. Baker have also agreed to enter into an Agreement of Restriction to be recorded with the property Chain of Title that stipulates that this property may not be sold until the fixture units in the second dwelling are removed and the second septic system has been demolished or removed from service.

Board staff has advised Mr. Boernsen of an option identified in the Board's minimum lot size exemption criteria that allows project proponents to implement an acceptable offset project. If Mr. & Mrs. Baker connect another septic system (that would not otherwise be required to be connected to the sewer) to the sewer, then it would not be necessary to remove the fixture units in the second home and the second septic system from service. Mr. & Mrs. Baker plan to continue to attempt to locate an offset that, if implemented, would allow septic tank discharges from the second dwelling unit to continue.

#### RECOMMENDATION:

Approve Mr. and Mrs. Baker's request for an exemption from the minimum lot size requirement specified in Resolution No. 89-157 with the following conditions: 1) Once the second home is no longer required for use of the Baker family, the fixture units will be removed from the home and the second septic system will be demolished or removed from service by filling the tank with sand after proper removal and disposal of septage; and 2) Mr. and Mrs. Baker must enter into an Agreement of Restriction, which shall become a part of the Chain of Title, that the fixture units in the second home must be removed and the second septic system must be demolished or properly abandoned prior to sale of the property; and 3) If Mr. & Mrs. Baker locate and implement an acceptable offset, the Agreement of Restriction shall be removed, allowing the continued use of the second home on their property.

Comments were solicited from the following agencies:

State Water Resources Control Board, Office of Chief Counsel – Jorge Leon  
Riverside County Environmental Health – Sam Martinez/Greg Dellenbach  
Riverside County Building and Safety – Steve Dondalski  
Riverside County Planning – Mark Balys